IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4785 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALIDHRA TEXTILE ENGINEERS LTD

Versus

DY COMMISSIONER OF INCOME TAX

Appearance:
MR IJ DESAI for Petitioner
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

The petitioner who is an assessee under the Income-tax Act by this petition under Article 226 of the Constitution of India seeks quashing of the impugned

notice dated 30.3.2000 issued under Section 148 read with Section 147 of the Income-tax Act, 1961 ("the Act" for short). The petitioner's income for the assessment year 1991-92 is proposed to be reassessed.

2. The learned counsel appearing for the petitioner contends that the impugned notice for the assessment year 1991-92 issued on 30.3.2000 is prima facie barred by limitation being beyond the period of four years from the end of the relevant assessment year as prescribed in the proviso to Section 147 of the Act. The proviso to Section 147 lays downs the maximum period of four years from the end of the relevant assessment year as period of limitation during which the assessee can be reassessed for income which had escaped assessment for tax. The said proviso, however, contains a rider that the prescribed period of four years of limitation would not be applicable to the case of an assessee who has not `fully and truly disclosed all material facts' necessary for the assessment in the relevant assessment year.

3. On the service of notice on this petition, reply affidavit has been filed in which the reasons have been recorded for initiating proceedings for escaped assessment against the assessee. The reasons recorded read as under :-

> "The assessee company does not have any manufacturing activity but, trading in re-sale of textile machinery and its parts manufacturing by its group companies. For trading activities, the tax was leviable at 50% while in the assessment order, the tax was levied at 40% resulting in short levy of tax of Rs.86,993/-. Even in the return income, the assessee had also paid tax 40%. There the assessee has filed inaccurate particulars of income alongwith return of income to the extent that the nature of income which was trading & not manufacturing."

Stating the reasons as aforesaid, it is stated that there has been a short levy of tax to the extent of Rs.86,883/-.

4. The learned counsel appearing for the petitioner read the relevant contents of his income-tax return to show that all necessary information and the particulars of income were fully and completely disclosed. It was clearly made known to the department that the assessee was only engaged in the trading activities and was not engaged in any manufacturing activity. A copy of the

acknowledgment of the return is placed before us in which in the column prescribed for describing the status of the assessee, code No. 14 has been mentioned. The said code No. 14 pertains to "a domestic company which is a trading company or an investment company and is also a company in which the public are not substantially interested." A copy of the return of the assessee for the assessment year 1991-92 has also been placed before us in which the petitioner has described very clearly that he is engaged in trading activity in textile machinery and parts. In the assessment order, the Assessing Officer himself has mentioned the fact that the assessee is in the business of re-sale of textile machineries and parts.

5. On the above undisputed facts, it is not open to the department to take a stand that the petitioner failed to fully, and truly disclose all the material facts and particulars for assessment in the relevant assessment year. The proceedings initiated by the impugned notice for reassessment after the prescribed period of limitation of four years are clearly barred by the proviso to Section 147 of the Act and deserve to be quashed. The petition, therefore, succeeds and is allowed. The impugned show cause notice dated 30.3.2000 (Annexure "A" - Page 6 to the petition) is hereby quashed and the department is restrained from proceeding on the basis of the said notice.

Rule is made absolute. Under the circumstances, we, however, make no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-